

PERSONNEL

MERIT SYSTEM BOARD

Classification, Services and Compensation

Proposed Readoption: N.J.A.C. 4A:3

Authorized By: Merit System Board, Ida L. Castro, Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6(d), 11A:2-11(h), 11A:3-1 through 7 and 11A:6-24; 29 U.S.C. 201, et seq.; and Executive Order No. 70 (1992).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2004-53

A public hearing concerning this proposed readoption will be held on:

Tuesday, March 9, 2004, at 3:00 P.M.

Merit System Board Room
44 South Clinton Avenue
Trenton, New Jersey

Please call Elizabeth Rosenthal of the Legal Liaison Unit at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by April 17, 2004 to:

Henry Maurer, Director
Merit System Practices and Labor Relations
Department of Personnel
P.O. Box 312
Trenton, New Jersey 08625-0312

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1(c), N.J.A.C. 4A:3 expires on July 26, 2004. The Merit System Board has reviewed the rules and found them to be necessary, reasonable and proper for the purposes for which they were originally promulgated, as

required by law. Therefore, they are being proposed for readoption without change at this time.

Subchapter 1 concerns allocations between the career and unclassified services, as well as allocations between the competitive and noncompetitive divisions of the career service. See N.J.A.C. 4A:3-1.1 through 1.4.

Subchapter 2 contains rules governing the Senior Executive Service (SES). These rules define the SES (N.J.A.C. 4A:3-2.1); provide for the designation of SES positions (N.J.A.C. 4A:3-2.2); regulate SES appointments, performance evaluations, compensation and benefits (N.J.A.C. 4A:3-2.3 through 2.6); and govern an employee's separation from the SES (N.J.A.C. 4A:3-2.9). It is noted that N.J.A.C. 4A:3-2.7 and 2.8 are reserved for future use.

Subchapter 3, Classification, concerns all aspects of the civil service classification system. N.J.A.C. 4A:3-3.1 includes basic classification principles. N.J.A.C. 4A:3-3.2 concerns the establishment of classification plans, while N.J.A.C. 4A:3-3.3 concerns the administration of classification plans. N.J.A.C. 4A:3-3.4 requires that a title be appropriate to the duties performed. N.J.A.C. 4A:3-3.5 governs the reclassification of positions. N.J.A.C. 4A:3-3.6 provides the procedures for the creation of new titles. Unique categories of titles have their own rules: trainee titles (N.J.A.C. 4A:3-3.7) and intermittent titles (N.J.A.C. 4A:3-3.8). The classification appeal procedure is set forth in N.J.A.C. 4A:3-3.9.

Subchapter 4 concerns compensation matters. N.J.A.C. 4A:3-4.1 establishes general compensation principles applicable to both State and local service. The remainder of the rules in Subchapter 4 regulate compensation in State service. N.J.A.C. 4A:3-4.2 provides for job evaluations, while N.J.A.C. 4A:3-4.3 provides for job reevaluation requests and appeals. Salary rates for initial appointments are provided for in N.J.A.C. 4A:3-4.4. Procedures regarding the setting of anniversary dates and the interaction between anniversary dates and levels of compensation are set forth in N.J.A.C. 4A:3-4.5, Anniversary dates; 4A:3-4.6, Anniversary date change when employee is in non-pay status; 4A:3-4.17, Salaries and anniversary dates for employees appointed from a special reemployment list; and 4A:3-4.18, Salaries and anniversary dates for employees appointed from a regular reemployment list. In addition, various types of pay adjustments are provided for in N.J.A.C. 4A:3-4.7, Determining types of pay adjustments; 4A:3-4.8, Lateral pay adjustments; 4A:3-4.9, Advancement pay adjustments; 4A:3-4.10, Demotional pay adjustments; 4A:3-4.11, Downward title reevaluation pay adjustments; and 4A:3-4.12, Movement of employees from no-range or single rate titles to titles having salary ranges. Setting salaries in special circumstances is provided for in N.J.A.C. 4A:3-4.13, Salaries of employees whose annual salaries are not on a step in their salary range; 4A:3-4.14, Movement of employees to trainee titles from titles having higher pay rates; 4A:3-4.15, Salaries for employees appointed to tentative title positions; and 4A:3-4.16, Salaries of employees on military leave during a trainee period. Other compensation issues are regulated in N.J.A.C. 4A:3-4.19, Other forms of compensation; 4A:3-4.20, Retroactive pay; and 4A:3-

4.21, Salary overpayments.

Subchapter 5, Overtime compensation, includes general provisions applicable to both State and local service (N.J.A.C. 4A:3-5.1). The remainder of the overtime rules pertain only to State service. They include 4A:3-5.2, Definitions; 4A:3-5.3, 40 hours or less in a workweek; 4A:3-5.4, Criteria for exemption from Fair Labor Standards Act; 4A:3-5.5, Federal fair labor standards applicable to more than 40 hours in a workweek for 35, 40 and NE titles; 4A:3-5.6, Federal fair labor standards applicable to more than 40 hours in a workweek for 3E, 4E, NL and N4 titles; 4A:3-5.7, Special circumstances, which pertains to such issues as on-call employees, training time, travel, exceptional emergencies, and special project rate compensation; 4A:3-5.8, Holiday pay; 4A:3-5.9, Appointing authority responsibilities, which requires appointing authorities to develop procedures for administering overtime; and 4A:3-5.10, Appeal procedures. In addition, Appendix A includes a chart regarding overtime eligibility and compensation.

As the Board has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed readoption without amendment of N.J.A.C. 4A:3 will continue to provide a clear, regulatory framework for vital activities of the Department of Personnel concerning classification and compensation. These rules have a substantial

impact upon thousands of merit system employees and hundreds of State and local appointing authorities. In the absence of readoption of this chapter, these individuals and government agencies would have no guidance on matters involving classification and compensation of personnel, other than the provisions of Title 11A, New Jersey Statutes.

Specifically, these rules codify current practice. The differentiation between the career and unclassified services in Subchapter 1 will continue to help ensure the proper allocation of titles between the two services. The readoption of these rules will also ensure the appropriate allocation of career service titles between the competitive and noncompetitive divisions.

The rules regarding the senior executive service (SES) in subchapter 2 will continue to provide fair, equitable and clear provisions regarding the creation and filling of high-level, managerial positions.

Subchapters 3 and 4 ensure that job duties and, in State service, pay scales, are in accordance with predictable formulas. These subchapters also implement the consolidation of personnel functions mandated by Executive Order No. 70 (1992). Therefore, these subchapters will, upon readoption, help to eliminate duplication and overlap of responsibilities in the area of personnel management. In particular, State agencies will retain their responsibilities, as appointing authorities, to make job assignments and to exercise overall managerial control over their workforce.

Meanwhile, the Department of Personnel will exercise its statutory responsibility to classify positions and, in State service, assign appropriate compensation to job titles. Subchapters 3 and 4 will further preclude an adversarial relationship between State agencies and the Department of Personnel in the areas of classification and compensation. However, employees and their union representatives will retain the right to appeal adverse determinations in these matters. Local appointing authorities will also retain the right to appeal classification determinations.

It is noted that N.J.A.C. 4A:3-3.3(f), concerning notice of certain classification actions to union representatives in State service, will continue to increase awareness by collective negotiations representatives about substantial changes affecting their members. Also, in three sections of Subchapter 4, Compensation, language provides that the Department of Personnel determines whether service in one title provided significant preparation and training for service in another title, and thus whether the employee is entitled to a more beneficial salary adjustment upon moving from one title to another. This language will continue to enhance uniform treatment of employees in State service.

Finally, the provisions of Subchapter 5 regarding overtime compensation will continue to ensure that State employees with fixed workweeks receive appropriate compensation for work beyond the normal workweek. In addition, it is noted that N.J.A.C. 4A:3-5.7 will continue to restrict overtime compensation for exceptional emergencies to non-limited employees in salary range 32 or above. This language is

consistent with other provisions in Subchapter 5 that restrict compensatory time off for such employees.

Economic Impact

The rules proposed for readoption without amendment will continue to provide a fair and equitable system for classifying positions in State and local service, and for compensating employees in State service. Compensation of employees in local service remains relatively free of central regulatory control. As such, these rules are beneficial to the economic security of public employees, as well as the interest of the public in having appropriate levels of compensation for governmental employees. In particular, the provisions that implement the consolidation of personnel functions, by reducing duplication and overlap of responsibilities, are expected to result in significant economy and efficiency in State government. However, many of the provisions in Chapter 3 clarify current policy, and if readopted, will have no substantial economic impact. Nevertheless, if this chapter is not readopted, there would be a substantial negative economic impact on public employers and employees, as well as the taxpaying public. Since the provisions of Title 11A, New Jersey Statutes, provide only broad, general guidance on matters of classification and compensation, costly litigation would be needed to resolve disputes concerning the application of these statutory provisions.

Federal Standards Statement

Executive Order No. 27 (1994) and P.L. 1995, c.65, require State agencies which

adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law.

To that end, it is noted that the overtime rules, at N.J.A.C. 4A:3-5, mandate greater overtime compensation than the Federal Fair Labor Standards Act (FLSA) requires. For example, although the FLSA requires payment of overtime based on the number of hours of work an employee actually performs, N.J.A.C. 4A:3-5.1 provides for overtime eligibility, in part, when an employee is in pay status for the full number of hours in his or her regular workweek. Under civil service rules, pay status includes any paid time, including paid leave time.

The overtime standards set forth in the aforementioned rules are of longstanding duration. In particular, the same language regarding overtime compensation based on time in pay status has been in effect since N.J.A.C. 4A:3 was first adopted in 1988. In fact, similar language existed in the rules that predated Title 4A, at least as far back as 1983. See N.J.S.A. 4:6-4.1 (repealed). The proposed readoption of N.J.A.C. 4A:3 with this language is therefore not a new standard. At this time, although the Department of Personnel has not performed a specific cost-benefit analysis with regard to the continuation of this longstanding practice, the Merit System Board believes that it is appropriate to continue this practice.

Jobs Impact

The current N.J.A.C. 4A:3 has not caused the generation or loss of jobs, nor is it

anticipated that any jobs will be generated or lost if N.J.A.C. 4A:3 is readopted. N.J.A.C. 4A:3 governs the existing classification and compensation program in the civil service system.

Agriculture Industry Impact

It is not anticipated that the proposed readoption would have any agriculture industry impact. N.J.A.C. 4A:3 concerns job classification and compensation under the merit system.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the rules proposed for readoption will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption regulate employment in the public sector.

Smart Growth Impact

It is not anticipated that the rules proposed for readoption would have any impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan as defined under Executive Order No. 4 (2002).

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 4A:3.

